

MARCO MUNOZ	§	
VS.	§	CIVIL ACTION NO. 1:16-CV-352
UNITED STATES OF AMERICA	§	

Movant contends that his attorney provided ineffective assistance of counsel by failing to argue that movant should receive an additional one-point reduction for acceptance of responsibility. In fact, defense counsel argued in his objections to the Presentence Report and at the sentencing hearing that movant qualified for the additional one-point reduction. However, the Court overruled

the objection. Movant argues that counsel should have moved to withdraw the guilty plea when movant was denied the one-point reduction, but this claim also lacks merit because, for the reasons stated in the magistrate judge's report and recommendation, movant was not entitled to the one-point reduction. Counsel does not perform deficiently by failing to pursue an argument that has no validity or hope of success. *United States v. Gaudet*, 81 F.3d 585, 591 (5th Cir. 1996).

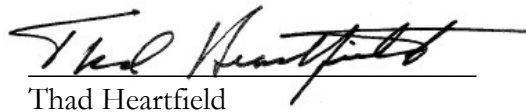
Movant is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability, like that for granting a certificate of probable cause to appeal under prior law, requires the movant to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004); *see also Barefoot v. Estelle*, 463 U.S. 880, 893 (1982). In making that substantial showing, the movant need not establish that he should prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84; *Avila v. Quarterman*, 560 F.3d 299, 304 (5th Cir. 2009). If the motion was denied on procedural grounds, the movant must show that jurists of reason would find it debatable: (1) whether the motion raises a valid claim of the denial of a constitutional right, and (2) whether the district court was correct in its procedural ruling. *Slack*, 529 U.S. at 484; *Elizalde*, 362 F.3d at 328. Any doubt regarding whether to grant a certificate of appealability is resolved in favor of the movant, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir. 2000).

Here, movant has not shown that any of the issues raised by his claims are subject to debate among jurists of reason, or that a procedural ruling is incorrect. In addition, the questions presented are not worthy of encouragement to proceed further. Movant has failed to make a sufficient showing to merit the issuance of a certification of appealability. Accordingly, a certificate of appealability shall not be issued.

ORDER

Accordingly, movant's objections (document no. 25) are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge (document no. 18) is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation. A certificate of appealability will not be issued.

SIGNED this the **12** day of **November, 2019**.


Thad Heartfield
United States District Judge